



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 24 2004

REPLY TO THE ATTENTION OF
(AE-17J)

Frank Murray, Vice President
and General Manager
Von Roll America Inc.
1250 St. George Street
East Liverpool, Ohio 43920

Re: In the Matter of Von Roll America Inc.
CAA Docket No. ~~CAA-05-~~ 2004 0045

Dear Mr. Murray:

I have enclosed a Complaint filed against Von Roll America Inc., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The Complaint alleges that Von Roll America violated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (hereinafter, the HWC MACT) at 40 CFR §§ 63.1200 through 63.1211 and 63.1213.

As provided in the Complaint, if you would like to request a hearing, you must do so in your Answer to the Complaint. Please note that if you do not file an Answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, John Matson, Esq., Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois 60604, at (312) 886-2243.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: Robert Hodanbosi, Ohio Environmental Protection Agency (EPA)
Ed Fasko, Ohio EPA/Northeast District Office
Ed Lim, Ohio EPA/Central Office
Patricia Natali, Ohio EPA/East Liverpool Field Office
Frank Popotnik, Ohio EPA/Northeast District Office
Abdur Rahim, Ohio EPA/Central Office
Michelle Tarka, Ohio EPA/East Liverpool Field Office

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Von Roll America Inc.
East Liverpool, Ohio

Respondent.

) Docket No. CAA-05- 2004 0045
) Proceeding to Assess a Civil
) Penalty under Section 113(d) of
) the Clean Air Act, 42 U.S.C.
) § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. The Respondent is Von Roll America Inc. (Von Roll), a corporation doing business in Ohio.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (hereinafter, the HWC MACT) at 40 C.F.R. §§ 63.1200 through 63.1211 and 63.1213.
5. The HWC MACT requires the owner or operator of a hazardous waste incinerator to comply with emission standards and requirements pertaining to operating, performance testing, monitoring, recordkeeping, and reporting.
6. Pursuant to 40 C.F.R. § 63.1203(a)(3), an existing source must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead and cadmium in excess of 240 micrograms per dry standard cubic meter, combined emissions, corrected to 7 percent oxygen. Hereinafter in this Complaint, lead and cadmium are referred to collectively as semi-volatile metals (SVM).
7. Pursuant to 40 C.F.R. § 63.1201(a), an existing source is any affected source that was constructed or reconstructed on or before April 19, 1996.

8. Pursuant to 40 C.F.R. § 63.1206(a)(1), an existing source must comply with the standards of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants an extension of time under § 63.6(i) or § 63.1213.
9. Pursuant to 40 C.F.R. § 63.6(i)(4)(i)(A), the Administrator may grant an extension to comply with a standard in 40 C.F.R. Part 63 "...if such an extension is necessary for the installation of controls."
10. Pursuant to 40 C.F.R. § 63.1213, the owner or operator of a hazardous waste incinerator may request from the Administrator of U.S. EPA (the Administrator) an extension of the compliance date of up to 1 year in order to install pollution prevention or waste minimization measures if the owner or operator can document that the owner or operator could not install such measures before the compliance date.
11. Pursuant to 40 C.F.R. § 63.1207(b)(1), an existing source must conduct comprehensive performance tests to demonstrate compliance with the emission standards provided by §§ 63.1203, 63.1204, and 63.1205, establish limits for the operating parameters provided by § 63.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.
12. Pursuant to 40 C.F.R. § 63.1207(c)(1), an existing source must commence the initial comprehensive performance test not later than 6 months after the compliance date.
13. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for emission standard violations that occurred from January 31, 1997 to March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

General Allegations

14. Von Roll is the owner and operator of a hazardous waste incinerator, as those terms are defined in 40 C.F.R. §§ 63.2 and 63.1201, at 1250 St. George Street, East Liverpool, Ohio.

15. Von Roll's hazardous waste incinerator is an existing source, pursuant to 40 C.F.R. § 63.1201(a), because it was constructed or reconstructed on or before April 19, 1996.
16. On May 29, 2003, Von Roll requested that U.S. EPA extend Von Roll's compliance date to March 6, 2004, if the Agency did not approve the CPT Plan before July 16, 2003.
17. Von Roll's request for an extension to comply with the HWC MACT did not claim that Von Roll needed additional time to install air pollution control devices. Further, Von Roll's request did not claim that it needed additional time to install pollution prevention or waste minimization measures. Therefore, U.S. EPA disapproved Von Roll's request for a compliance extension.

Count I

18. Complainant incorporates paragraphs 1 through 17 of this Complaint, as if set forth in this paragraph.
19. Pursuant to 40 C.F.R. § 63.1207(e)(1)(i), on June 22, 2001, Von Roll submitted a Comprehensive Performance Test (CPT) Plan to the Administrator. Von Roll revised the CPT Plan on December 12, 2001, and February 17, May 6, and June 25, 2003.
20. Von Roll's CPT Plan, as revised on June 25, 2003, included a request to extrapolate the SVM feed rate during the CPT to establish the maximum SVM feed rate operating parameter limit; to use lead as a surrogate for the two SVMs; and to spike one of the liquid waste feed streams with lead during the CPT. Von Roll's revised CPT Plan included the procedures to sample the exhaust combustion gas for SVMs.
21. On September 4, 2003, U.S. EPA approved Von Roll's revised CPT Plan.
22. Between September 8 and 11, 2003, Von Roll conducted a CPT at its hazardous waste incinerator. Von Roll did not demonstrate compliance with the SVM emission standard set forth at 40 C.F.R. § 63.1203(a)(3). However, the CPT, conducted on September 8 and 11, 2003, preceded the HWC MACT's compliance date.
23. On November 4, 2003, Von Roll again revised its CPT Plan. U.S. EPA approved the revised CPT Plan on December 17, 2003.

24. On December 17 and 18, 2003, Von Roll conducted a second CPT at its hazardous waste incinerator.
25. On February 5, 2004, Von Roll reported to U.S. EPA that the average emission concentration of SVM on December 17 and 18, 2003, was 397.7 micrograms SVM per dry standard cubic meter, corrected to 7 percent oxygen ($\mu\text{g SVM/dscm @ 7\% O}_2$).
26. Thus, during the December 2003 CPT, Von Roll discharged into the atmosphere combustion gases that contained SVMs in excess of the emission standard set forth at 40 C.F.R. § 63.1203(a)(3).
27. On February 5, 2004, Von Roll further revised its CPT Plan. U.S. EPA approved the revised CPT Plan on March 2, 2004.
28. On March 3, 2004, Von Roll conducted a third CPT at its hazardous waste incinerator.
29. On March 16, 2004, Von Roll reported to U.S. EPA that the average emission concentration of SVM on March 3, 2004, was 360.8 $\mu\text{g/dscm @ 7\% O}_2$.
30. Thus, on March 3, 2004, Von Roll discharged into the atmosphere combustion gases that contained SVMs in excess of the emission standard set forth at 40 C.F.R. § 63.1203(a)(3).
31. On April 12, 2004, Von Roll further revised the CPT Plan. Von Roll included three operating conditions which combined two SVM spiking rates and two blow down rates for Von Roll's high energy wet scrubber. On April 20, 2004, U.S. EPA approved the revised CPT Plan.
32. On April 20, 21, and 22, 2004, Von Roll conducted a fourth CPT at its hazardous waste incinerator at three operating conditions.
33. On May 13, 2004, Von Roll reported to U.S. EPA that the average emission concentrations of SVM during the April 2004 CPT were 19.9, 5.20 and 21.7 $\mu\text{g/dscm @ 7\% O}_2$. Thus, during the April 2004 CPT, Von Roll demonstrated compliance with the SVM emission standard set forth at 40 C.F.R. § 63.1203(a)(3).
34. Von Roll's discharge into the atmosphere of combustion gasses that contained SVMs in excess of the standards set forth at 40 C.F.R. § 63.1203(a)(3), on December 17 and 18,

2003 and on March 3, 2004, constituted violations of 40 C.F.R. § 63.1203(a)(3) and of Section 112(f)(4) of the Clean Air Act, 42 U.S.C. § 7412(f)(4).

Proposed Civil Penalty

35. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
36. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$59,400. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.
37. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

38. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

39. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

40. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized John Matson, Esq., to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. Mr. Matson's address is:

John Matson, Esq.
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 60604-3590

Penalty Payment

41. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mr. Matson and to:

Attn: Compliance Tracker
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard, AE-17J
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

42. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must

specifically make the request in its answer, as discussed in paragraphs 36 through 41 below.

Answer

43. Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 32 above, and must serve copies of the written Answer on the other parties.
44. If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.
45. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
46. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.
47. Respondent's Answer must also state:
 - a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. the basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing as discussed in paragraph 36 above.
48. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual

allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.


Settlement Conference

49. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mr. Matson at the address or phone number specified in paragraph 33 above.
50. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written Answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

51. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/24/2004
Date


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Von Roll America, Inc.

Docket No. CAA-05-2004 00-45

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number AA-65-2004 0045 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Frank Murray, Vice President and General Manager
Von Roll America, Inc.
1250 St. George Street
East Liverpool, Ohio 43920

on the 27th day of Sept, 2004.

Loretta Shaffer, Secretary
AECAS (MN-OH)

Loretta Shaffer

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0006 1558 5397

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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RECEIVED
REGIONAL HEARING
CLERK